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ENCORE RECEIVABLE MANAGEMENT, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

SAMUEL KWESI DADJO,

Plaintiff,

vs.

ENCORE RECEIVABLE
MANAGEMENT, INC., a Kansas
Corporation,
Defendant.

CASE NO. C-07-05856 MEJ

ANSWER & DEMAND FOR JURY TRIAL

Complaint Filed: November 19, 2007

COMES NOW Defendant ENCORE RECEIVABLE MANAGEMENT, INC. (hereinafter
“ENCORE”) and for its Answer to Plaintiff’s Complaint, states and alleges as follows:

I. INTRODUCTION

1. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph
1 of Plaintiff’s Complaint and, therefore, denies the same for the present time.

II. JURISDICTION

2. ENCORE admits this Court generally has jurisdiction over claims which arise under
15 U.S.C. 1692 *et seq.* and 28 U.S.C. § 1337, but denies that Plaintiff has any claim herein.

3. ENCORE denies the allegations in Paragraph 3 of Plaintiff’s Complaint.

1 III. VENUE

2 4. ENCORE admits that generally venue would be proper in this said claims, but
3 denies that Plaintiff has any such claim herein.

4 IV. INTRADISTRICT ASSIGNMENT

5 5. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph
6 5 of Plaintiff's Complaint and, therefore, denies the same for the present time.

7 V. PARTIES

8 6. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph
9 6 of Plaintiff's Complaint and, therefore, denies the same for the present time.

10 7. ENCORE admits the allegations in Paragraph 7 of Plaintiff's Complaint.

11 VI. FACTUAL ALLEGATIONS

12 8. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph
13 8 of Plaintiff's Complaint and, therefore, denies the same for the present time.

14 9. ENCORE has been unable to locate any information on this Debtor and, therefore,
15 denies the allegations in Paragraph 9 of Plaintiff's Complaint for the present time. In further
16 answering, ENCORE continues its efforts to locate said information and will amend its Answer
17 accordingly.

18 10. ENCORE has been unable to locate any information on this Debtor and, therefore,
19 denies the allegations in Paragraph 10 of Plaintiff's Complaint for the present time. In further
20 answering, ENCORE continues its efforts to locate said information and will amend its Answer
21 accordingly.

22 11. ENCORE has been unable to locate any information on this Debtor and, therefore,
23 denies the allegations in Paragraph 11 of Plaintiff's Complaint for the present time. In further
24 answering, ENCORE continues its efforts to locate said information and will amend its Answer
25 accordingly.

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1 12. ENCORE has been unable to locate any information on this Debtor and, therefore,
2 denies the allegations in Paragraph 12 of Plaintiff's Complaint for the present time. In further
3 answering, ENCORE continues its efforts to locate said information and will amend its Answer
4 accordingly.

5 13. ENCORE has been unable to locate any information on this Debtor and, therefore,
6 denies the allegations in Paragraph 13 of Plaintiff's Complaint for the present time. In further
7 answering, ENCORE continues its efforts to locate said information and will amend its Answer
8 accordingly.

9 14. ENCORE has been unable to locate any information on this Debtor and, therefore,
10 denies the allegations in Paragraph 14 of Plaintiff's Complaint for the present time. In further
11 answering, ENCORE continues its efforts to locate said information and will amend its Answer
12 accordingly.

13 15. ENCORE has been unable to locate any information on this Debtor and, therefore,
14 denies the allegations in Paragraph 15 of Plaintiff's Complaint for the present time. In further
15 answering, ENCORE continues its efforts to locate said information and will amend its Answer
16 accordingly.

17 16. ENCORE has been unable to locate any information on this Debtor and, therefore,
18 denies the allegations in Paragraph 16 of Plaintiff's Complaint for the present time. In further
19 answering, ENCORE continues its efforts to locate said information and will amend its Answer
20 accordingly.

21 17. ENCORE has been unable to locate any information on this Debtor and, therefore,
22 denies the allegations in Paragraph 17 of Plaintiff's Complaint for the present time. In further
23 answering, ENCORE continues its efforts to locate said information and will amend its Answer
24 accordingly.

25 18. ENCORE has been unable to locate any information on this Debtor and, therefore,
26 denies the allegations in Paragraph 18 of Plaintiff's Complaint for the present time. In further
27 answering, ENCORE continues its efforts to locate said information and will amend its Answer
28 accordingly.

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1 19. ENCORE has been unable to locate any information on this Debtor and, therefore,
2 denies the allegations in Paragraph 19 of Plaintiff's Complaint for the present time. In further
3 answering, ENCORE continues its efforts to locate said information and will amend its Answer
4 accordingly.

5 20. ENCORE has been unable to locate any information on this Debtor and, therefore,
6 denies the allegations in Paragraph 20 of Plaintiff's Complaint for the present time. In further
7 answering, ENCORE continues its efforts to locate said information and will amend its Answer
8 accordingly.

9 21. ENCORE has been unable to locate any information on this Debtor and, therefore,
10 denies the allegations in Paragraph 21 of Plaintiff's Complaint for the present time. In further
11 answering, ENCORE continues its efforts to locate said information and will amend its Answer
12 accordingly.

13 22. ENCORE has been unable to locate any information on this Debtor and, therefore,
14 denies the allegations in Paragraph 22 of Plaintiff's Complaint for the present time. In further
15 answering, ENCORE continues its efforts to locate said information and will amend its Answer
16 accordingly.

17 23. ENCORE has been unable to locate any information on this Debtor and, therefore,
18 denies the allegations in Paragraph 23 of Plaintiff's Complaint for the present time. In further
19 answering, ENCORE continues its efforts to locate said information and will amend its Answer
20 accordingly.

21 24. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph
22 24 of Plaintiff's Complaint and, therefore, denies the same for the present time.

23 25. ENCORE denies the allegations in Paragraph 25 of Plaintiff's Complaint.

24 26. ENCORE denies the allegations in Paragraph 26 of Plaintiff's Complaint.

25 27. ENCORE denies the allegations in Paragraph 27 of Plaintiff's Complaint.

26 28. ENCORE denies the allegations in Paragraph 28 of Plaintiff's Complaint.

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VII. CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

29. Paragraph 29 of Plaintiff's Complaint contains no affirmative allegations against ENCORE. To the extent said paragraph is deemed to contain any such allegations, ENCORE denies the same.

30. ENCORE repeats and incorporates by reference its responses set forth in Paragraphs 1 through 28 above.

31. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 31 of Plaintiff's Complaint and, therefore, denies the same for the present time.

32. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 32 of Plaintiff's Complaint and, therefore, denies the same for the present time.

33. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 33 of Plaintiff's Complaint and, therefore, denies the same for the present time.

34. ENCORE denies the allegations in Paragraph 34, including subpart a. through d., of Plaintiff's Complaint.

35. ENCORE denies the allegations in Paragraph 35 of Plaintiff's Complaint.

36. ENCORE denies the allegations in Paragraph 36 of Plaintiff's Complaint.

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

37. Paragraph 37 of Plaintiff's Complaint contains no affirmative allegations against ENCORE. To the extent said paragraph is deemed to contain any such allegations, ENCORE denies the same.

38. ENCORE repeats and incorporates by references its responses set forth in Paragraphs 1 through 36 above.

39. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 39 of Plaintiff's Complaint and, therefore, denies the same for the present time.

40. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 40 of Plaintiff's Complaint and, therefore, denies the same for the present time.

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41. ENCORE lacks sufficient knowledge to admit or deny the allegations in Paragraph 41 of Plaintiff's Complaint and, therefore, denies the same for the present time.

42. ENCORE denies the allegations in Paragraph 42, including subparts a through d, of Plaintiff's Complaint.

43. ENCORE denies the allegations in Paragraph 43 of Plaintiff's Complaint.

44. ENCORE denies the allegations in Paragraph 44 of Plaintiff's Complaint.

45. ENCORE denies the allegations in Paragraph 45 of Plaintiff's Complaint.

46. ENCORE denies the allegations in Paragraph 46 of Plaintiff's Complaint.

47. ENCORE denies the allegations in Paragraph 47 of Plaintiff's Complaint.

48. ENCORE denies all allegations which have not been specifically admitted or denied herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. As a separate, affirmative defense, ENCORE alleges that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a separate, affirmative defense, ENCORE alleges that its alleged actions were proper and did not violate any provisions of 15 U.S.C. § 1692 *et seq.*

THIRD AFFIRMATIVE DEFENSE

3. As a separate, affirmative defense, ENCORE alleges that its alleged actions were proper and did not violate any provisions of California Civil Code § 1788 *et seq.*

FOURTH AFFIRMATIVE DEFENSE

4. As a separate, affirmative defense, ENCORE alleges that at all times mentioned in the Complaint, ENCORE acted lawfully and within its legal rights, with a good faith belief in the exercise of that right, and in the furtherance of a legitimate business purpose. Further, ENCORE acted in good faith in the honest belief that the acts, conduct and communications, if any, of ENCORE were justified under the circumstances based on information reasonably available.

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FIFTH AFFIRMATIVE DEFENSE

5. As a separate, affirmative defense, ENCORE alleges that its alleged actions were not accompanied by actual malice, intent or ill will.

SIXTH AFFIRMATIVE DEFENSE

6. As a separate, affirmative defense, ENCORE alleges that its conduct, communications and actions, if any, were privileged pursuant to, *inter alia*, 15 U.S.C. § 1692(k)(c) and California Civil Code § 1785.32.

SEVENTH AFFIRMATIVE DEFENSE

7. As a separate, affirmative defense, ENCORE alleges that if it is assumed, *arguendo*, that ENCORE violated a statute as alleged in Plaintiff's Complaint, which presupposition ENCORE denies, such violation was not negligent nor intentional, and resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

EIGHTH AFFIRMATIVE DEFENSE

8. As a separate, affirmative defense, ENCORE alleges that it at all times alleged in Plaintiff's Complaint maintained reasonable procedures created to prevent any type of intentional violations of the Fair Debt Collection Practices Act and/or the Rosenthal Fair Debt Collection Practices Act.

NINTH AFFIRMATIVE DEFENSE

9. As a separate, affirmative defense, ENCORE alleges that if Plaintiff was damaged in any sum or sums alleged, which ENCORE denies, then Plaintiff's damages are limited by 15 U.S.C. §§ 1692(k)(a)(1), 1692(k)(a)(2)(A), 1692(k)(a)(3) and 1692(k)(b)(1).

TENTH AFFIRMATIVE DEFENSE

10. As a separate, affirmative defense, ENCORE alleges that if Plaintiff was damaged in any sum or sums alleged, which ENCORE denies, then Plaintiff's damages are limited by California Civil Code § 1788.30.

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ELEVENTH AFFIRMATIVE DEFENSE

11. As a separate, affirmative defense, ENCORE alleges that it reserves the right to allege and assert any additional and/or further affirmative defenses as become apparent to ENCORE during the course of this litigation.

WHEREFORE, Defendant ENCORE RECEIVABLE MANAGEMENT, INC. prays that Plaintiff's Complaint be dismissed with prejudice, for its attorney and costs incurred herein and for such further relief as the Court deems just and equitable.

DATED: January 15, 2008

CARLSON & MESSER LLP

By /S/
David J. Kaminski, Esq.
Attorneys for Defendant ENCORE
RECEIVABLE MANAGEMENT, INC.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Defendant ENCORE RECEIVABLE MANAGEMENT, INC. demands a jury trial in this matter.

DATED: January 15, 2008

CARLSON & MESSER LLP

By /S/
David J. Kaminski, Esq.
Attorneys for Defendant ENCORE
RECEIVABLE MANAGEMENT, INC.